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IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1949.

No. .....

GLEN S. DILLE, *Petitioner,*

vs.

THE CARTER OIL COMPANY, A CORPORATION; W. A. DELANEY, JR.; AND ZEPHYR DRILLING COMPANY, A CORPORATION, *Respondents.*

PETITION FOR WRIT OF *CERTIORARI.*

To the Honorable FRED M. VINSON, Chief Justice, and Associate Justices of the Supreme Court of the United States:

May It Please the Court:

Your petitioner, Glen S. Dille, respectfully petitions this Honorable Court for writ of certiorari requiring the United States Court of Appeals, Tenth Circuit, to certify to this Court for review and determination, the case of Glen S. Dille, Appellant, *vs.* The Carter Oil Company, a corporation, W. A. Delaney, Jr., and Zephyr Drilling Company, a corporation, Appellees, No. 3759, on the docket of said United States Court of Appeals.

I.

Statement of the Matter Involved.

The Carter Oil Company, a West Virginia corporation, as complainant, commenced this action in the District Court

of the United States for the Northern District of Oklahoma, against Glen S. Dille, W. A. Delaney, Jr., and Zephyr Drilling Company, all of whom are citizens of Oklahoma, under Title 28, Section 400, U. S. C. (Revised Act, Title 28, U. S. C., Sections 2201, 2202), seeking a declaratory judgment defining the rights of the defendants.

It is alleged that the controversy between Dille on one side, Zephyr Drilling Company and W. A. Delaney, Jr., on the other side, materially affected it (The Carter) as purchaser of oil being then produced from the involved premises and as operator of the various leasehold estates. (R. 2) None of the defendants had attacked or questioned the rights of Carter. All had admitted its superior interest. Zephyr Drilling Company and W. A. Delaney, Jr., however, denied any interest of Glen S. Dille and filed cross petitions against him (R. 26, 32 and 41) praying that he be estopped from asserting any interest in the property.

Thereafter, subpoena *duces tecum* was issued to and served upon Dille (R. 28) requiring him to appear July 6, 1948, to testify before L. E. Lindsay, a notary public, and to surrender at the designated time and place all of his records, maps, deeds, letters, and other writings relating to the subject-matter of the case. Dille at that time had pending in the state court his own action brought against Zephyr Drilling Company and W. A. Delaney, Jr. (R. 86)

The petitioner, Glen S. Dille, filed his motion to dismiss (R. 37) upon the ground that the action brought by The Carter Oil Company in the United States District Court for the Northern District of Oklahoma, was fictitious, in that no controversy of either fact or law existed between The Carter and any one of the defendants; and all of said defendants being citizens of Oklahoma the controversy existing between them could not be litigated in the United

States Courts; that there did not exist the requisite diversity of citizenship upon which federal jurisdiction was claimed and asserted.

On July 6, 1948, Dille appeared with his maps and other documents pursuant to the command of the subpoena *duces tecum* (R. 45). He objected to the taking of his deposition and to the surrender of his maps and other documents. (R. 46-64). His claim was that no jurisdiction existed in the case. His co-defendants had caused the subpoena *duces tecum* to be issued and they, upon Dille's refusal to testify, filed application for order directing witness to answer questions on deposition. (R. 38) This application was presented to and heard at 1:30 p. m. of same day by the Honorable Royce H. Savage, Judge of the United States District Court for the Northern District of Oklahoma (R. 54). The order was granted (R. 58) requiring Dille to testify and surrender his records, the court simultaneously refusing to inquire into its jurisdiction. (R. 60)

The court at top of page 60 of the record said:

> "It is a question of whether independent grounds are necessary; that it is a matter that would have to be presented and considered. But in the meantime I don't know of any reason why these parties are not entitled to go ahead and take these depositions or any reason why they are not entitled to have the witnesses who have been subpoenaed to answer the questions. The only reason you suggest as a grounds for justification of the refusal of the witnesses to answer is that the court does not have jurisdiction. And we are not ready to decide that question as I see it."

The court then advised the petitioner and his counsel at the bottom of page 60 of record, and extending to page 61, as follows:

"After the order has been made by the court if the witnesses then refuse to testify in violation of the court order then I say refusal may be considered as contempt of the court. And the court would be empowered to punish as the circumstances might justify. So I am going to order the witnesses to answer the questions."

While under duress the petitioner testified and surrendered his records, and appealed to the United States Court of Appeals for the Tenth Circuit, his appeal being docketed in said court as Case No. 3759. That court, on April 18, 1949, dismissed the appeal (R. 95), and on May 18, 1949, denied petition for rehearing. (R. 109)

II.

This Court Has Jurisdiction.

This petition for writ of certiorari is prosecuted pursuant to Title 28, U. S. C., Section 1254.

III.

Questions Presented.

The question presented is whether under the Constitution and Laws of the United States, a judge has judicial power to invoke coercive remedies (such as assessing fines against, and imprisonment of citizens of the United States —as was threatened in this case) in a cause without first determining that jurisdiction had attached in the particular cause. The action of the trial court operated in a practical way of interfering with petitioner's prosecution of his own cause then pending in the state court, and that it deprived him of possession of his maps, letters, and other documents needed in that action. In the light of its arbitrary and oppressive action the trial court violated the Fifth Amendment to the Constitution and also obstructed

the administration of justice in the state court. It constitutes a disregard of the inherent and bounden duty of every American court to inquire into its jurisdiction before rendering a judgment, or assessing a fine, or inflicting terms of imprisonment, upon citizens of the United States. Due process was not satisfied therein. No court of the United States has jurisdiction of civil controversies between citizens of the same state. This was Dille's claim of lack of Federal jurisdiction. The trial court said in effect that it made no difference to him—that Dille should testify and surrender his records, or go to jail, or pay a fine.

This constitutes tyranny. Due process in Federal cases includes the determination by the court that the controversy is between parties of diverse citizenship.

IV.

Reasons Relied Upon for Allowance of the Writ.

The writ of certiorari should be allowed in this case because of the court's rule, that an order compelling a witness to testify is not final or appealable, is in direct conflict with the Constitution of the United States (Art. 3, Section 2, and Fifth Amendment), when applied in cases where jurisdiction of the court is challenged on the ground of lack of diversity, and where the trial court invokes judicial power without first determining the queston of jurisdiction.

To not grant the writ in this case would constitute a virtual license to any litigant (regardless of identity of common citizenship) to go into a United States court under the discovery procedure and gain possession of important documents without fear of any supervision by this Honorable Court. It is unlawful search and seizure, contrary to the Fifth Amendment.

Wherefore, petitioner prays that this Court grant certiorari and issue its writ to the United States Court of Appeals for the Tenth Circuit, commanding said court to certify a full and complete transcript of the record and proceedings in said court, had in Case No. 3759, Glen S. Dille *vs.* The Carter Oil Company, a corporation, W. A. Delaney, Jr., and Zephyr Drilling Company, to the end that this case may be reviewed and determined by this Court, and judgment of said Court of Appeals reversed, and for such other relief as to this Court may seem proper.

Respectfully submitted,

GLEN S. DILLE, *pro se,*
Atlas Life Building,
Tulsa, Oklahoma.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF *CERTIORARI.*

I.

Opinion of Courts Below.

After this appeal was lodged in the United States Court of Appeals, Tenth Circuit, the trial court sustained petitioners' Motion to Dismiss. This was done on September 15, 1948. The plaintiff, The Carter Oil Company, a corporation, did not appeal. Zephyr Drilling Company and W. A. Delaney, Jr., both citizens of Oklahoma, did appeal against their co-defendant Glen S. Dille, another citizen of Oklahoma. The opinion reversing the Order of Dismissal is shown on page 95 of the Record.

II.

Jurisdiction of the Court.

In paragraph II of Petition for Writ of Certiorari, the grounds of jurisdiction of this Court are stated.

III.

Statement of Case.

The statement made in paragraph I of the Petition for Writ of Certiorari are referred to and incorporated herein. No additional statement will be made except to show that the trial court placed Court Rules of Procedure above and beyond its duty to inquire into and determine the question of jurisdiction prior to invoking judicial power against petitioner. The trial court at bottom of page 58 and top of page 59 of the Record made this statement:

> "I am under the impression that under the Federal Rules of Procedure that after a suit has been filed

and process served, that a party has a right to take depositions and in connection with the taking of depositions I am under the impression that it is not necessary for the court to determine whether a cause of action is stated or whether it has jurisdiction of the subject-matter, or any other matter that might have to be considered in due course in the progress of the litigation."

IV.

Specification of Error.

The errors specified in paragraphs III and IV of the Petition for Writ of *Certiorari* are incorporated herein by reference and made a part of the within brief.

V.

Argument.

Diversity of citizenship was the sole ground of Federal jurisdiction. The Carter Oil Company, plaintiff, was the only litigant of diverse citizenship. Its action was dismissed September 15, 1948. It took no appeal. The petitioner claimed no controversy existed between the Carter Oil Company and any of the defendants and that the suit was brought solely as a means of providing a vehicle upon which the Zephyr Drilling Company and W. A. Delaney, Jr., could ride into Federal Court to litigate their controversy with Dille, who, like themselves, is a citizen of the State of Oklahoma.

In *Indianapolis* v. *Chase National Bank*, 314 U. S. 63, 86 L. ed. 48, this Court said:

> "Diversity cannot be conferred upon Federal courts by the parties' own determination of who are plaintiffs and who are defendants. *It is our duty, as it is that of the lower Federal courts, to look beyond*

the pleadings and arrange the parties according to their sides in the dispute."

The lower court, upon the most earnest solicitations that it was his bounden duty to determine the question of jurisdiction, refused to consider it and invoked judicial power against the petitioner to the point of threatening him with jail term, or fine, or both.

In *United States* v. *Green*, 107 F. (2d) 19, the court said:

> "The District Courts of the United States are courts of limited jurisdiction, *and the presumption at every stage of a cause is that the cause is outside the jurisdiction of a Court of the United States unless the contrary appears from the record.*"

The trial court in the case at bar took the opposite view, presumed to exercise jurisdiction, but refused to determine jurisdiction.

In *Calcote* v. *Texas Pac. Coal and Oil Co.*, 157 F. (2d) 218, the court said:

> "In diversity cases * * *. *Jurisdictional questions come first in the orderly disposition of a case.* A precarious jurisdiction that limits the scope of judicial decision on the merits cannot be entertained. The same limitation would restrict review on appeal, even on certiorari, and no one could tell whether the court had jurisdiction until it had determined the merits of the controversy."

In *Page* v. *Wright*, 116 F. (2d) 449, at page 453 the court said:

> "From the authorities referred to, the conclusion seems inescapable that the duty devolves upon the court, '*at any time the jurisdictional question arises to proceed no farther until that question is determined*'."

See also *Emmons* v. *Smith*, 149 F. (2d) 869; *Caesar* v. *Burgess*, 103 F. (2d) 503, and *Rhode Island* v. *Mass.*, 12 Peters 657, 9 L. ed. 1233, where the court said:

> "*Before we can proceed in this cause* we must, therefore, inquire whether we can hear and determine the matters in controversy between the parties."

And in *Norton* v. *Larney*, 289 Fed. 395, the court said it was its duty to determine jurisdiction whether the parties raised the question or not.

It seems axiomatic that Federal courts, being limited in jurisdiction under Article 3, Section 2, of the Constitution have an even greater duty than the inherent duty of all courts, to "go no farther" until jurisdiction is determined, "regardless of the manner in which the question arises." The performance of that duty, incumbent upon every court, would avoid the oppressive, arbitrary, and capricious actions such as took place in this case. Had the petitioner stood his ground in this, a case where no diversity exists, he would have been either fined, or jailed, or both.

In conclusion petitioner respectfully prays that a writ of certiorari be issued and that upon final hearing and determination the judgment of the United States Court of Appeals for the Tenth District be reversed.

Respectfully submitted,

GLEN S. DILLE, *pro se*,
Atlas Life Building,
Tulsa, Oklahoma.